



CF0000062919

(2)

IN THE HON'BLE HIGH COURT OF JUDICATURE AT JABALPUR.

CRI. A. NO. 803 /2000
Division Bench (Criminal)

APPELLANT.
(IN JAIL)

Purshottam @ Dhanesh Gurn, aged/about
35 year's S/O Dhanesh Ram Gound
R/O Dandpani Kankuri, P.S. Patthalgaon,
Distt. Raigarh (M.P.).

VERSUS

RESPONDENT. State of Madhya Pradesh.

MEMO OF APPEAL UNDER SECTION 374 OF THE CODE OF
CRIMINAL PROCEDURE.

CONVICTION.

1. Under section 302 of
I.P.C.

SENTENCE.

Imprisonment for life and
fine of Rs5000/ in default
of payment 1 year's R.I.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No. 803/2000

Purushottam

-Versus-

State of Madhya Pradesh (now Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
Dilip Raosaheb Deshmukh
Judge

Hon'ble Shri Justice L.C. Bhadoo

Sd/-
L.C. BHADOO
Judge

seen
27th.06.2005

Post for 01.07.2005

Sd/-
(JUDGE)
.06.2005

(31)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No. 803/2000

Purushottam

-Versus-

State of Madhya Pradesh (now Chhattisgarh)

CORAM: HON'BLE SHRI L.C. BHADOO
HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, JJ

Shri Abhay Tiwari, Advocate for the appellant.

Shri Sachin Singh Rajput and Shri Akhil Mishra, Panel Lawyers for the State.

J U D G M E N T

Per Dilip R. Deshmukh, J.

The accused appellant has been convicted under Section 302 I.P.C. and sentenced to undergo imprisonment for life for committing murder of Santoshi Bai on 28.09.1997 at about 01.30 P.M. in village Kachhar, Police Station Patthhalgaon. The impugned judgment was delivered by Mr. A.K.Samantray, 2nd Additional Sessions Judge, Raigarh in Sessions Trial No.33/98.

2. It is not disputed that Koushalya Bai P.W.5 is the mother of the deceased.

3. Briefly stated the prosecution story is that Santoshi Bai aged about 20 years though married was living with her mother Koushalya Bai P.W.5. On 28.9.1997 Santoshi Bai returned to the

house from work at about 12.00 noon. The appellant alongwith one Lalji Singh P.W.8 was present in the house with Koushalya Bai P.W.5. The appellant was wearing blue coloured shirt and black full pant. Lalji Singh P.W.8 said to Santoshi Bai that he would get her married to the appellant, Purushottam. This annoyed Santoshi Bai and she left the house for bathing towards the well. The appellant sent Lalji Singh for buying liquor and went towards the well where Santoshi had gone for bathing. The appellant forcibly dragged Santoshi, undressed her and committed rape on her. The appellant thereafter throttled Santoshi Bai and threw her body in the well. During the occurrence Santoshi Bai resisted which caused injuries on the person of the appellant.

4. Kumari Bai P.W.6 saw the appellant dragging Santoshi near the well and informed Budu P.W.13 who in turn informed Koushalya Bai P.W.5. Koushalya Bai went to the place of occurrence and saw that the sari of Santoshi Bai was floating in the water of the well. The dead body of Santoshi was removed from inside the water. It was naked. Her saya, blouse, hair band and the blue shirt of the appellant were also taken out from the well.

5. Balram P.W.1 lodged marg intimation Ex.P.3 in Police Station Patthhalgaon. Station House Officer Shri D.P.Thakur P.W.14 proceeded to the spot and wrote Dehati Nalishi Ex.P.15 and registered offence under Section 302 I.P.C. vide first information report Ex.P.16. Panchanama Ex.P.7 of the dead body of Santoshi

Bai was prepared and the body was sent for medical examination. Dr. J. Minj P.W.9 who conducted the autopsy found the following injuries:

- 1) One abrasion over right side of neck sized $\frac{1}{2}$ " x $\frac{1}{2}$ ".
- 2) Curved abrasion over right side of the neck sized $\frac{1}{2}$ " x $\frac{1}{2}$ ".
- 3) Linear abrasion over left side of the neck sized 1 cm. x $\frac{1}{2}$ cm.
- 4) Abrasion over chin sized $1\frac{1}{2}$ " cm. x 1" x $\frac{1}{4}$ ".
- 5) Abrasion over right side ankle joint 2" x 1" x $\frac{1}{4}$ ".
- 6) Abrasion over back side left scapular region sized $1\frac{1}{2}$ " x $1\frac{1}{2}$ " x $\frac{1}{4}$ ".

All the above injuries, in the opinion of the Doctor, were ante mortem in nature. Both lungs were congested. The hyoid bone was fractured. The lips were blue, tongue was swollen, bruised and dark in colour and protruded, hands were clenched, discharged fecal matter was present. Nails were cyanosed. Neck was swollen. In the opinion of the Doctor, the injuries were caused by hard and blunt object except injuries No.1 to 4 which were caused by nails. In his opinion, Santoshi Bai died due to Asphyxia as a result of throttling and mode of death was homicidal.

6. On 28.9.1997 vide seizure Ex.P.5, the saya, blouse, one polyester sari and one full sleeves blue shirt with the right side of the sleeve torn were recovered from the well. Soap, Soap-case, bathing brush and one yellow Phundra were recovered from near the well vide Ex.P.8 by Sub-Inspector D.P.Thakur P.W.14. During

preparation of Panchanama Ex.P.7 it was noted that Santoshi Bai was bleeding from the vagina. Vaginal slides were prepared and were sent for chemical examination alongwith the underwear (Chaddi) of the appellant which was seized vide Ex.P.6. In Chemical examination presence of spermatozoa was confirmed on the underwear of the appellant but not on the vaginal slide of deceased Santoshi Bai. After completion of investigation, the accused appellant was prosecuted under Section 302 I.P.C. Upon committal of the case by Judicial Magistrate First Class, Dharamjaigarh, sessions trial No.33/98 commenced. The accused abjured his guilt. As many as 18 witnesses were examined by the prosecution. The accused examined Sainath Singh D.W.1 in defence.

7. The trial Court believed the prosecution evidence, convicted and sentenced the appellant as shown in paragraph 1 (supra).

8. The learned counsel for the appellant has mainly contended that Kumari Bai P.W.6 in paragraph 4 of cross-examination has clearly admitted that she did not tell the police that she had seen the accused appellant dragging Santoshi Bai near the well but had only said that she had seen one boy dragging a girl. The police did not call her for identification of that boy or girl. This testimony goes to show that Kumari Bai did not identify the appellant. There is no other eye witness. The appellant and Lalji Singh had left the house of Koushalya Bai P.W.5 together, and therefore, even Lalji

Singh P.W.8 could have been the perpetrator of the crime. The circumstances relied upon by the prosecution were not fully established and the evidence led by the prosecution did not exclude the hypothesis of the innocence of the accused.

9. On the other hand, the learned Government Advocate supported the judgment of the trial Court and argued that the fact that Santoshi Bai died a homicidal death, the evidence that Lalji Singh wanted Santoshi Bai to be married to the appellant, the presence of the appellant in the house with the deceased during the conversation which annoyed the deceased, the recovery of the blue shirt of the appellant from the well, the testimony of Jugeshwar P.W.2 who saw the appellant near the well and the fact that the accused appellant had also sustained injuries during the occurrence were fully proved by the prosecution and established the guilt of the appellant beyond doubt.

10. We have perused the record and have also given our thoughtful consideration to the rival arguments.

11. The law relating to appreciation of circumstantial evidence has been laid down by the Apex Court in the case of Dhananjoy Chatterjee v. State of W.B. reported in (1994) 2 SCC 220 as under:

"In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis

except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused."

12. Koushalya Bai P.W.5 has deposed that on the date of occurrence Santoshi Bai returned from work at noon when Lalji Singh P.W.8 and the appellant Purushottam who had, after consuming liquor, come to his house and were sitting there. She has categorically stated that appellant Purushottam was wearing a blue coloured shirt and black pant. Lalji Singh had said that he had searched a bridegroom for Santoshi Bai which caused annoyance to Santoshi Bai and taking a soap she left for bathing at the well. Lalji Singh also left the house and after some time the appellant also left saying that he was going home. After some time on receiving information from Budu, Balram and Jugey that some clothes were floating in the water, she went to the well and saw that the sari and phundra were floating in the well. There was sign of dragging near the well. Thereafter the dead body of Santoshi Bai was recovered. The body was naked. There were injuries on the throat, chin, cheeks, nose and forehead and blood was coming out of vagina.

13. It was pointed out by the counsel for the appellant that in cross-examination paragraph 6, this witness has stated that she had told in her statement under Section 161 Cr.P.C. that Lalji Singh had said that he had searched a bridegroom for his daughter

but would not know if the same was not written in her case diary statement Ex.D.1. We have gone through Ex.D.1 wherein it has been clearly stated that Lalji Singh had said to Santoshi Bai that he would get her married to Purushottam who would be their "Bhato" which had annoyed Santoshi Bai. Thus we find that this part of the evidence has been recorded without perusal of Ex.D.1 by the trial Judge. We find that the testimony of Koushalya Bai P.W.5 that Lalji Singh and the appellant Purushottam who was wearing a blue coloured shirt and black pant were sitting in the house when Santoshi Bai returned from work, and when Lalji Singh's conversation had annoyed she left for bathing to the well and soon thereafter the appellant had also left for the house.

14. Lalji Singh P.W.8 is related to the appellant. He has stated that on the day Santoshi Bai died, he and the appellant Purushottam had gone to the house of Koushalya and at that time Koushalya was alone. On being cross-examined by the Assistant Public Prosecutor, he has admitted that in his case diary statement he had told the police that after some time Santoshi had come there and he had jokingly said that he would call Purushottam as "Bhato" (brother-in-law) whereupon she got annoyed. He has also admitted that the appellant Purushottam had asked him to bring the liquor whereupon he had gone to his house. Nothing has been elicited by the defence in his cross-examination which would render his above testimony unreliable.

Thus, the testimony of Koushalya Bai P.W.5 finds corroboration from the testimony of Lalji Singh P.W.8 that the appellant was present in the house of Koushalya Bai when the conversation by Lalji Singh about calling Purushottam as Bhato (brother-in-law) had annoyed Santoshi Bai.

15. Balram P.W.1 had deposed that he had gone to the well on being informed by Budu and saw that one sari and phundra were floating on the water. When the police arrived, the dead body was recovered from the well.

16. Jugeshwar P.W.2 has testified that upon information received from Budu he had gone to the well and saw the appellant Purushottam standing near the well. On being asked, Purushottam started bathing himself. When he peeped inside the well, he saw that a sari and phundra were floating on the water. So far as testimony that this witness had seen Purushottam standing near the well in which the sari and phundra were floating, is concerned, this has not been rebutted in cross-examination. Madanram P.W.3 is the witness who was asked by the police to get inside the well to take out the phundra and clothes whereupon he had taken out 4 numbers of clothing which were seized vide Ex.P.5. by the police. In cross-examination, it has emerged in his testimony that he had taken out one sari, petticoat, blouse and shirt from the tank. Nothing has been elicited in cross-examination which would render his testimony unworthy of credit.

Thus, it is fully established that from the well, as per seizure memo Ex.P.5, one sari, blouse, petticoat and one shirt were seized by the police.

17. The testimony of investigating officer D.P.Thakur P.W.14 that he had seized one cotton petticoat, blouse, one polyester sari and one blue coloured full sleeves shirt with the right sleeve torn vide seizure memo Ex.P.5 after these articles were taken out from the well, is fully corroborated. It is thus fully established that one blue coloured full sleeve shirt of the appellant was recovered from the well from which the dead body of Santoshi Bai also recovered. He has further proved the preparation of Panchanama of the dead body of Santoshi vide Ex.P.7. He has stated in cross-examination that when he reached the spot, the dead body of Santoshi had been taken out from the well which is corroborated by the testimony of Koushalya Bai P.W.5 in paragraph 3 that she had taken out the dead body of Santoshi Bai from the well and found that it was naked.

18. Kumari Bai P.W.6 aged about 13 years has deposed that she saw the accused dragging Santoshi near the well and had informed this to Budu. However, in cross-examination she deposed that she had stated in her statement under Section 161 Cr.P.C. that she had only seen that one boy was dragging one girl but did not tell their names. She has further admitted that since she was at a distance she could not identify the girl and had merely heard the

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noise of dragging. Thus, her statement in cross-examination renders her testimony wholly unreliable.

19. We have gone through the medical evidence of Dr. J.Minj P.W.9. The findings recorded by Dr. Minj have been dealt with in paragraph 5 (supra) in details. Learned counsel for the appellant has not been able to create any dent in the testimony of Dr. Minj either during cross-examination or during arguments before us and we find that the testimony of Dr. J.Minj P.W.9 establishes beyond doubt that Santoshi had died a homicidal death due to throttling and there were injuries present on her person.

20. Prosecution has examined Dr. Laxman Banoda P.W.12 who has deposed that on 29.9.97 the appellant-Purushottam was sent for medical examination from Police Station Patthalgaon and on examination he had found the following injuries on the appellant:

- a) Abrasion 1.5. cm. x .2 cm. over left angle of mouth blackish in colour.
- b) Abrasion 2 cm. x .2 cm. on the chest.
- c) Abrasion 1 cm. x .2 cm. on posterio lateral aspect of right forearm.
- d) Abrasion 3 cm long over right elbow.

He opined that the injuries sustained by the appellant could be caused by nail scratches or by teeth bite. We have gone through the testimony of Dr. Laxman Banoda P.W.12 and find it to be wholly unrebutted in cross-examination. It indicates that the

deceased must have scratched the appellant by nails when the appellant dragged, overpowered and throttled her.

21. Thus, from the foregoing discussion, we find that the following links in the chain of circumstantial evidence have been fully established by the prosecution.

i) That the appellant wearing a blue shirt had gone to the house of Santoshi Bai in the afternoon on the date of occurrence with Lalji Singh P.W.8.

ii) That on return of Santoshi Bai from work, Lalji had said that the appellant was a prospective bridegroom for Santoshi which had annoyed her and she left for bathing at the well.

iii) That Lalji Singh P.W.8 had thereafter returned to his home.

iv) That the appellant also left the house of Koushalya Bai P.W.5 and soon thereafter was seen at the well by Jugeshwar P.W.2 and at that point of time Jugeshwar had seen the sari and phundra floating inside the well.

v) That Santoshi Bai had died a homicidal death due to throttling. Her body was naked and had sustained injuries.

vi) That one blue shirt of the appellant with its right sleeve torn was recovered from the well from where the dead body of Santoshi, her saya, blouse and sari were recovered.

vii) That the appellant had sustained injuries on the chest, face and right shoulder and right elbow. This also corresponds to

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the fact that right sleeve of the blue shirt recovered from the well was torn.

22. Bearing in mind the law laid down by the Apex Court in Dhananjoy Chatterji's case (supra), we find that the above fully established links in the chain of circumstantial evidence are of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. These established links are not capable of being explained by any other hypothesis except the guilt of the accused and the chain of circumstantial evidence is so complete that it leaves no ground for the belief consistent with the innocence of the accused appellant.

23. Having thus considered the evidence led by the prosecution, we are of the considered opinion that the trial Court has rightly convicted the accused appellant under Section 302 of the I.P.C. We find no merit in this appeal and dismiss it accordingly.

Sd/-
L.C.BHADOO
Judge

14.08.2005

Sd/-
Dilip Raosaheb Deshmukh
Judge